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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SKYWEST PILOTS ALPA ORGANIZING  
COMMITTEE, *et al.*,

Plaintiffs,

vs.

SKYWEST AIRLINES, INC.,

Defendant.

CASE No. C-07-2688 CRB

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION TO DISMISS  
PLAINTIFF STEVE DOW;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: June 20, 2008

Time: 10:00 a.m.

Place: Courtroom 8, 19th Floor

1 **NOTICE OF MOTION AND MOTION TO DISMISS**

2 PLEASE TAKE NOTICE that on June 20, 2008, at 10:00 a.m., before the Honorable  
3 Charles R. Breyer, in Courtroom 8 of this Court, located at 450 Golden Gate Avenue, San  
4 Francisco, California, plaintiffs will move, and hereby do move, this Court to dismiss plaintiff Steve  
5 Dow from this action, pursuant to Rule 41(a)(2).

6 Plaintiffs bring this motion on the ground that Steve Dow is no longer employed by  
7 defendant SkyWest Airlines, Inc., and therefore no longer has any stake in the present case. This  
8 motion is based upon the memorandum of points and authorities set forth below, such argument as  
9 may be heard by the Court at the hearing, and the pleadings, records, and files in this action.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 The present case seeks injunctive and declaratory relief against defendant SkyWest Airlines,  
13 Inc. ("SkyWest"), based on SkyWest's unlawful interference with the efforts of plaintiffs, who are  
14 SkyWest pilots, to exercise their rights under the Railway Labor Act. Plaintiff Steve Dow was, at  
15 the time this action was filed, a SkyWest pilot and a named plaintiff. Declaration of Linda Lye  
16 ("Lye Decl.") ¶2. However, in March 2008, he voluntarily terminated his employment with  
17 defendant for reasons unrelated to the present case. *Id.*

18 Because he no longer has a personal interest in this litigation, Mr. Dow seeks dismissal from  
19 the case. Defendant has refused to agree to dismissing Mr. Dow. Therefore, plaintiffs are forced to  
20 file this motion seeking a Court order dismissing Mr. Dow pursuant to Federal Rule of Civil  
21 Procedure 41(a)(2). *See* Lye Decl. ¶¶2-3.

22 **II. ARGUMENT**

23 **A. Mr. Dow's Dismissal Is Appropriate Because He No Longer Has An Interest In**  
24 **This Litigation, And His Dismissal Will Not Cause SkyWest Plain Legal**  
**Prejudice.**

25 Voluntary dismissal pursuant to Rule 41(a)(2) should be liberally granted so long as the  
26 defendant will not be prejudiced. *Stevedoring Servs. of Am. v. Armilla Int'l B.V.*, 889 F.2d 919, 921  
27 (9th Cir. 1991); *Mayes v. Fujimoto*, 181 F.R.D. 453, 455 (D. Haw. 1998) ("Rule 41(a)(2) motions  
28 for voluntary dismissal should be liberally granted, provided that no party will suffer legal

1 prejudice.”); *Watson v. Clark*, 716 F.Supp.1354, 1355 (N.D. Cal. 1989) (same). “A motion for  
2 voluntary dismissal under Rule 41(a)(2) is addressed to the district court’s sound discretion . . . .”  
3 *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996) (quotation marks and  
4 citation omitted).

5 Dismissal should be denied only if the defendant would suffer “plain legal prejudice” as a  
6 result. *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir.1982). “[L]egal  
7 prejudice” is defined as “prejudice to some legal interest, some legal claim, [or] some legal  
8 argument . . . .” *Westlands Water Dist.*, 100 F.3d at 97. “Plain legal prejudice . . . does not result  
9 simply when defendant faces the prospect of a second lawsuit or when plaintiff merely gains some  
10 tactical advantage.” *Hamilton*, 679 F.2d at 145. “Neither does plain legal prejudice arise from  
11 defendant’s missed opportunity for a legal ruling on the merits.” *Watson*, 716 F.Supp. at 1355.  
12 Finally, “the expense incurred in defending against a lawsuit does not amount to legal prejudice.”  
13 *Williams v. Peralta Cmty. College Dist.*, 227 F.R.D. 538, 539 (C.D. Cal. 2005) (quoting *Westlands*  
14 *Water Dist.*, 100 F.3d at 97). Instead, plain legal prejudice exists “where actual legal rights are  
15 threatened or where monetary or other burdens appear to be extreme or unreasonable.” *Watson*, 716  
16 F.Supp. at 1356.

17 SkyWest has not contended that Mr. Dow still has an interest in this litigation. Lye Decl. ¶3.  
18 And it cannot demonstrate that Mr. Dow’s dismissal will cause it to suffer any undue burden.  
19 Instead, SkyWest has refused to agree to Mr. Dow’s dismissal solely because it served discovery on  
20 Mr. Dow prior to the termination of his employment, and Mr. Dow has not yet responded to that  
21 discovery. *See id.* Thus, SkyWest is withholding its consent in order to leverage discovery from  
22 Mr. Dow.

23 The fact that Mr. Dow has not yet responded to discovery responses clearly does not  
24 constitute the type of “plain legal prejudice” to a defendant that might warrant denial of a motion to  
25 dismiss pursuant to Rule 41(a)(2). SkyWest remains free to seek non-burdensome, non-harassing  
26 discovery of Mr. Dow under Federal Rule of Civil Procedure 45, just as it may of any third party.  
27 Therefore, Mr. Dow’s dismissal will not affect “some legal interest, some legal claim, [or] some  
28 legal argument” of SkyWest. *Westlands Water Dist.*, 100 F.3d at 97. Nor is this even a situation

1 where dismissal of Mr. Dow would deprive SkyWest of an opportunity to obtain a legal ruling on  
2 the merits, as seven other individual pilot and two organizational plaintiffs remain in the action. *Cf.*  
3 *Watson*, 716 F.Supp. at 1355 (“defendant’s missed opportunity for a legal ruling on the merits” does  
4 not constitute “plain legal prejudice”). Moreover, Mr. Dow testified at the preliminary injunction  
5 trial in this matter, and SkyWest already had the opportunity to, and did, cross-examine him about  
6 this testimony at that time. The requested dismissal should be granted.

7 **B. Mr. Dow’s Dismissal Should Be Without Prejudice.**

8 The “default position” of Court-ordered dismissal pursuant to Rule 41(a)(2) is without  
9 prejudice. *Hargis v. Foster*, 312 F.3d 404, 412 (9th Cir. 2002); Fed. R. Civ. P. 41(a)(2) (“Unless  
10 the order states otherwise, a dismissal under this paragraph (2) is without prejudice.”). “Factors that  
11 may be considered in determining whether a dismissal should be with or without prejudice include:  
12 (1) the defendant’s effort and expense in preparing for trial, (2) excessive delay and lack of  
13 diligence on the part of the plaintiff in prosecuting the action, [and] (3) insufficient explanation of  
14 the need to take a dismissal.” *Williams*, 227 F.R.D. at 540 (quotation marks and citation omitted;  
15 alteration in original).

16 Here, SkyWest will suffer no prejudice due to Mr. Dow’s dismissal; the dismissal will not  
17 cause any significant expenditure of SkyWest’s resources or render any significant past expenditure  
18 unnecessary; and it has been prompted by external circumstances that have wholly eliminated Mr.  
19 Dow’s interest in this litigation. Further, plaintiffs have not delayed, having sought a stipulation  
20 from SkyWest to dismiss Mr. Dow promptly after he left SkyWest. Lye Decl. ¶4. In these  
21 circumstances, Mr. Dow should retain his right to pursue the claims raised in this lawsuit, should he  
22 become re-employed at SkyWest at some point in the future. Therefore, Mr. Dow’s dismissal  
23 should be without prejudice.

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**CONCLUSION**

For the foregoing reasons, plaintiffs respectfully request that the Court dismiss Mr. Dow from this case without prejudice.

Dated: May 13, 2008

Respectfully submitted

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by: \s\Linda Lye  
Linda Lye

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